



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## Comment on Recent Cases

---

ADMIRALTY JURISDICTION: "SAVING A COMMON LAW REMEDY."—Assuming that Congress has not already, pursuant to its undoubted constitutional right to do so,<sup>1</sup> excluded state action in the matter of injuries to seamen on the high seas by federal enactments covering the same field of legislation, the question remains whether or not the remedy given by the California Workmen's Compensation Act provides a "common law remedy" within the meaning of the saving clause of the Judiciary Act of 1789.<sup>2</sup> In *North Pacific Steamship Company v. Industrial Accident Commission of California*<sup>3</sup> this question was answered in the affirmative.

With this assumption in mind, the view is submitted that, although the state could not go to the length of making its remedy exclusive and thus deny to seamen the right to proceed in the admiralty courts, Congress by the term "common law remedy" merely wished to make clear that the state courts still had the right to apply all remedies except the one peculiar to the admiralty courts, namely, the proceeding in rem against the vessel. It therefore follows that the saving clause includes all remedies in personam, and excludes only such remedies as are in rem. That this is the law is borne out by numerous dicta<sup>4</sup> and by certain decisions in situations practically identical with the present;<sup>5</sup> but it still remains for the Supreme Court of the United States to decide in the matter of a remedy afforded by a compensation act.

On the other hand, however, there has been advanced the ingenious argument that the intention of Congress was to preserve to suitors the privileges afforded in a common law action, chief of which was the right to a trial by jury, and that the remedy given by the Workmen's Compensation Act, calling for a special proceeding without a jury trial, is, therefore not a common law remedy within the meaning of the saving clause.

The narrow interpretation of the words "common law remedy"

---

<sup>1</sup> U. S. Const., Art. III, § 2; In re Garnett (1890), 141 U. S. 1, 35 L. Ed. 631, 11 Sup. Ct. Rep. 840.

<sup>2</sup> Act of Sept. 24, 1789, c. 20, § 9, 1 Stats. at L. 76 (giving to the District Courts exclusive admiralty and maritime jurisdiction, "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it").

<sup>3</sup> (Feb. 3, 1917), 53 Cal. Dec. 170.

<sup>4</sup> Leon V. Galceran (1870), 11 Wall. 185, 20 L. Ed. 74; Johnson v. Westerfield (1911), 143 Ky. 10, 135 S. W. 425.

<sup>5</sup> See post, n. 8.

<sup>6</sup> Aurora Shipping Co. v. Boyce (1911), 191 Fed. 960; The Hamilton (1907), 207 U. S. 398, 52 L. Ed. 264, 28 Sup. Ct. Rep. 133.

which is adopted in this apparently formidable argument might possibly form the basis for still further restricting the jurisdiction of the state and of the state courts to such remedies as were known to the common law system unaffected by statute, or, at least, to such remedies only as were known to the common law at the time of the passage of the Judiciary Act. Such a narrow view cannot, however, at this date be entertained. The various state death statutes, for example, giving causes of action which were entirely unknown to the common law, have been consistently upheld and enforced even in the admiralty courts.<sup>6</sup> The only cases where acts have been held unconstitutional are those where the remedy which the state attempted to give was enforceable in rem by the state courts.<sup>7</sup>

These death statutes, although providing a remedy unknown to the common law, nevertheless, retained the right to a jury trial, and were enforceable in the common law courts. The cases, however, have gone further, and by the weight of authority suits in equity are held to be within the purview of the saving clause.<sup>8</sup> These decisions would appear strongly persuasive in the principal case, since the so-called distinguishing feature of a common law action, trial by jury, is absent in both suits in equity and in proceedings before industrial commissions.

Apart, however, from authority, it seems reasonable to hold in accordance with the general understanding that it is a remedy enforceable in personam as opposed to the admiralty proceeding in rem, which is saved. The statute reserves a common law remedy, not an action at common law, and it would be idle to deny that the common law remedy of carriers to retain possession for freight is not preserved to the state courts simply because it does not involve a trial by jury. The conclusion follows that a "common law remedy," as employed by the Judiciary Act, means any remedy, not the maritime libel in rem, whether with or without action or jury, whereby a liability is imposed after due process of law. It would therefore undoubtedly appear that the remedy given under the Workmen's Compensation Act to seamen on domestic ships for injuries occurring on the high seas is within the saving clause, and part of the state's concurrent jurisdiction.

*J. F. R.*

**ADMIRALTY JURISDICTION: TORTS: THE LOCALITY TEST.**—It was formerly a dogma of the bench and bar that in regard to torts the jurisdiction of the admiralty courts depended altogether on the locality where the tort occurred, and it was generally assumed

<sup>6</sup> *The Moses Taylor* (1866), 4 Wall. 411, 18 L. Ed. 397; *The Hine v. Trevor* (1866), 4 Wall. 555, 18 L. Ed. 451.

<sup>8</sup> *Knapp, Stout & Co. v. McCaffrey* (1889), 177 U. S. 638, 44 L. Ed. 921, 20 Sup. Ct. Rep. 824; *Soper v. Manning* (1888), 147 Mass. 126, 16 N. E. 752; *Reynolds v. Nielson* (1903), 116 Wis. 483, 93 N. W. 455, 96 Am. St. Rep. 1000.